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13 **STATE WATER RESOURCES CONTROL BOARD**

14 THE BOEING COMPANY
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16 Petitioner.

17 **PETITION FOR REVIEW OF WASTE**
18 **DISCHARGE REQUIREMENTS**

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Petitioner Boeing Company ("Petitioner") hereby appeals to the State Water Resources Control Board ("SWRCB") for review under California Water Code Section 13320(a) of an action of the California Regional Water Quality Control Board, Los Angeles Region ("Regional Board"). On July 1, 2004, the Regional Board issued Waste Discharge Requirements ("WDRs"), which serve as a National Pollutant Discharge Elimination System ("NPDES") permit, for the Santa Susana Field Laboratory ("SSFL"). The WDRs include provisions that are beyond the authority of the Regional Board, inappropriate or improper, or not supported by the record.

Since the early 1990s the SSFL site has been under the supervision of the California Department of Toxic Substances and Control ("DTSC") as a Resource Conservation and Recovery Act ("RCRA") site for corrective action for investigation and cleanup of past releases. This corrective action addresses air, soil, surface water and groundwater impacted from past releases. If implemented, the WDRs which are the subject of this appeal could interfere with on-going clean-up efforts at the SSFL by imposing numeric discharge limitations that may require site modifications or changes in operations at the facility in the areas under DTSC jurisdiction. If site modifications are required this could

1 result in conflicts with the site remediation measures being developed by the Petitioner and
2 DTSC and with the schedule for public participation mandated by RCRA. If operational
3 changes are required, this could conflict with Petitioner's ability to continue to test rocket
4 engines at the site.

5 **Site Background**

6 SSFL consists of approximately 2850 acres of largely undeveloped land.
7 Operations at SSFL since 1950 include research, development, assembly, disassembly, and
8 testing of rocket engines, missile components, and chemical lasers. The site was previously
9 operated by Rockwell International and was acquired by Petitioner in 1996. Petitioner
10 currently has limited operations at SSFL and is working with the DTSC to remediate the
11 impacts of past operations. The United States Department of Energy ("DOE") also
12 conducted operations in research and development of energy-related programs and seismic
13 testing experiments. However, current DOE activities onsite are solely related to facility
14 decontamination, decommissioning, and environmental remediation and restoration.

15 Due to the dry weather conditions and the limited operations at SSFL, offsite
16 discharges are infrequent, and the vast majority of surface water discharges consist of storm
17 water. There are 18 outfalls covered by the WDRs. Most of these outfalls consist of either
18 storm water releases alone or are storm water dominated releases.

19 The site discharges limited amounts of process waters. The industrial process
20 flows are as follows:

21 **■ Treated Groundwater**

22 Contaminated groundwater at SSFL is pumped, treated to remove VOCs, and
23 then discharged to ponds where the water may be reused on-site, evaporate, or
24 percolate into the soil. Any treated water that returns to the soil is significantly
25 cleaner than the water removed prior to treatment.

26 **■ Treated Sanitary Sewage**

27 Although authorized for tertiary treatment and discharge, the sanitary sewage
28 from SSFL is collected and transported off-site. Therefore, effluent from

sewage treatment operations is not currently discharged to surface or groundwater.

▪ **Cooling Water From Rocket Engine Testing**

Rocket engine testing occurs periodically with each test usually lasting less than one minute. Water is used to cool the structure that diverts the rocket blast to keep the structure from melting. The deluge water is then discharged into trenches which flows to ponds that contain primarily storm water.

The industrial process waters generated onsite are sometimes reused to reduce water consumption and, due to their limited volume, typically flow offsite only during significant storm events that cause the ponds to overflow. When this occurs, the process waters constitute only a small portion of the discharge. There are six outfalls (Outfalls 012-017) that have the potential to discharge process water. Of these, only one is currently, although infrequently, discharging any process water.

Discharges from Outfalls 012-017 flow through Outfalls 011 and 018 and are required to be monitored redundantly at those outfalls and again near the property line (Outfalls 001 and 002) even where there are no industrial contributions between monitoring locations. All of the above-referenced discharges are adequately monitored at the two most downstream outfalls (Outfalls 001 and 002). Even at the industrial outfalls, discharges are primarily storm water with only minor contributions of treated groundwater, treated sewage treatment plant effluent (currently not discharged) and deluge water used for cooling the flame deflection buckets during rocket engine testing. Discharges from all other portions of SSFL (Outfalls 003 - 010) consist solely of storm water.

The previous NPDES permit regulated discharges at seven outfalls and an area referred to as Happy Valley. Those WDRs had been in effect since 1994. The WDRs approved on July 1, 2004 added 11 new compliance points and required for the first time that Petitioner sample discharges upstream of the treatment units covered by the RCRA corrective action program. The stated purpose of this monitoring is so that additional

1 numeric discharge limitations can be established at these monitoring points. [See Page 27,
2 Section 73 of the WDRs, attached as Exhibit A.] While these discharges are relatively clean,
3 they may flow through impacted channels to holding and treatment ponds which have been
4 identified as Solid Waste Management Units ("SWMUs") requiring investigation and clean
5 up as directed by DTSC. DTSC is responsible for investigating the site, reviewing and
6 approving the remediation measures, holding public hearings as required by RCRA, and
7 determining when the clean-up has been completed.

8 The site has been sampled extensively under both the RCRA and NPDES
9 programs. Specifically, over 6,500 groundwater samples have been collected and subject to
10 over 14,300 analyses. As well, 6,200 surface soil samples have been taken with over 10,000
11 analyses under the RCRA Facility Investigation ("RFI"). Additionally, over 20,000 surface
12 water analyses have been performed under the NPDES program. Finally, over 3,500 rock
13 core samples have been collected to depths of up to 900 feet per the RFI.

14 **1. Petitioner.**

15 Petitioner is The Boeing Company. Petitioner operates Santa Susana Field
16 Laboratory, located at the top of Woolsey Canyon Road in the Simi Hills, California 91311.
17 The local contact is Paul Costa who can be reached at (818) 586-9177.

18 **2. Action To Be Reviewed And Relief Requested.**

19 Petitioner seeks review of the WDRs, Order No. R4-2004-0111, Permit No.
20 CA0001309, CI No. 6027. A copy of the WDRs is attached as Exhibit A. This appeal is a
21 place-holder petition, and Petitioner requests that this matter be held in abeyance by the
22 SWRCB. Petitioner will notify the SWRCB if it intends to pursue the appeal. We are
23 informed that if the petition becomes active, Petitioner will be given the opportunity to
24 amend the petition and submit detailed Points & Authorities at that time.

25 **3. Date Of Action.**

26 The WDRs were adopted on July 1, 2004.

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1 4. Reasons Why Regional Board's Action Was Inappropriate Or Improper
2 And Statement Concerning Substantive Issues And Objections.

3 The issuance of the subject WDRs was beyond the authority of the Regional
4 Board, inappropriate or improper, or not supported by the record for the following reasons:
5 (1) the WDRs require monitoring at several new locations, in areas currently undergoing
6 RCRA corrective action, for the purpose of establishing future numeric discharge limitations,
7 which will complicate and may adversely impact the remediation efforts currently underway
8 under the supervision of the DTSC; (2) the WDRs impose numeric discharge limitations on
9 storm water-only discharges in violation of the Policy for Implementation of Toxic Standards
10 for Inland Surface Waters, Enclosed Bays, and Estuaries of California, State Water
11 Resources Control Board, 2000 ("State Implementation Plan" or "SIP"); and, (3) the
12 Regional Board retained or imposed new numeric discharge limitations for certain pollutants
13 without showing a reasonable potential for such pollutants to be present in concentrations in
14 excess of water quality criteria and without evidence of impairment of the receiving water
15 body by such pollutant, in violation of the SIP.

16 A. There Is No Rational Basis For Monitoring Upstream Of A Solid
17 Waste Management Unit.

18 Monitoring and discharge limitations are suitable for point source discharges
19 but impracticable for conditions at SSFL. The WDRs impose monitoring requirements at
20 several locations upstream ("upstream channels") of one or more of the DTSC-identified
21 SWMUs. Sampling discharges in the upstream channels is unnecessary as these waters will
22 continue on to the compliance points located downstream from the SWMUs. Further,
23 imposing monitoring requirements in the upstream channels ignores the fact that these
24 channels are known to have historic contamination and are already part of the SWMU
25 designation or otherwise subject to corrective action by DTSC. If numeric discharge limits
26 are adopted for discharges in these upstream channels, Petitioner may be required to modify
27 its facilities or operations to meet the discharge limits, which may be wholly impractical.
28 Even if compliance with discharge limits is achievable, the water will then flow through a

1 SWMU and into a pond (which is also a SWMU), consisting mostly of storm water. As a
2 result, the upstream discharges are unlikely to influence the characteristics of the pond
3 effluent. Therefore, any discharge limits imposed would not benefit any of the ultimate
4 water sources the Regional Board is trying to protect.

5 While the water found in the upstream channels is generally clean because it is
6 mostly storm water, occasional exceedances of numeric discharge limits may occur. The
7 facility is not a “point source” in the sense that Petitioner can control contaminants in
8 influent and effluent streams. Those contaminants are likely to come from historic
9 operations that are the subject of ongoing remediation – remediation that cannot begin until
10 the RCRA procedural requirements have been satisfied. Imposing numeric limits on such
11 discharges simply exposes Petitioner to mandatory penalties with little or no ability to
12 address the underlying violation. To the extent there are contaminants downstream of the
13 SWMUs that are of concern, Petitioner has no objection to continuing to monitor at or near
14 the SSFL property line.

15 **B. Imposing Numeric Effluent Limits On Storm Water-Only**
16 **Discharges Violates The State Implementation Plan.**

17 The WDRs treat storm water discharges in the same way as waste water
18 discharges by imposing numeric limits on these discharges. This is inconsistent with the
19 federal and state regulatory environment. From 1987 to the present, United States
20 Environmental Protection Agency (“EPA”) regulations, guidance, and NPDES permits for
21 storm water reflect the use of General Permits and Best Management Practice (“BMPs”) due
22 to the complexities inherent in storm water discharges. The SWRCB has historically
23 followed EPA’s direction. The SWRCB issued a series of General Permits for storm water
24 discharges, all of which utilize BMPs and not numeric discharge limits. These General
25 Permits were first issued in 1991 and continue today to mirror the BMP practice of the EPA.
26 In 2003, the SWQCB issued a General Permit Fact Sheet that stated, “Numeric effluent
27 limitations are not required unless specific receiving water-based numeric effluent limits
28 have been established”, which is not the case for the receiving water bodies for this facility.

1 Fact Sheet, SWRCB Order No. 03-010DWQ (2003). In addition, the SIP clearly states that
2 it does not apply to storm water discharges.

3 A technical and legal pre-requisite to the establishment of numeric limits for
4 storm water is a clear understanding of baseline or background concentrations. To impose
5 numeric limits without establishing the background concentrations unfairly places the
6 permittee in the position to be responsible for pre-existing background concentrations and
7 concentrations which occur in nature.¹ The Regional Board does not have legal authority to
8 require this of the Petitioner. The State of California has found ample technical, legal and
9 policy support to defer to the general permitting scheme. However, the Regional Board has
10 ignored the technical complexities, as well as the SWRCB policy direction contained in the
11 SIP, when crafting these WDRs.

12 Consequently, Petitioner requests removal of numeric limits for outfalls
13 numbered 003-010 and placement of SSFL storm water discharges under the General
14 Industrial Storm Water Permit. If the facility remains subject to an individual permit,
15 Petitioner objects to numeric effluent limits on storm water discharges.

16 C. The WDRs Impose Numeric Discharge Limitations For Certain
17 Chemicals Even Though Reasonable Potential Has Not Been
18 Demonstrated.

19 In adopting the SIP, the SWRCB developed a process for determining when
20 the presence of a pollutant in a discharge does or does not pose a “reasonable potential” to be
21 present in receiving waters at a concentration in excess of water quality criteria. The SIP
22 also requires evidence of impairment of the receiving water body by such pollutant. The
23 numeric effluent limits challenged in this petition were imposed after substantial and
24 unchallenged monitoring data and evidence was submitted showing there was no reasonable
25 potential for such chemicals to be present in excess of water quality criteria. Despite this
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27 ¹ The permit sets limits without regard for receiving water conditions. There is no discussion
28 or consideration of the applicability of water quality objectives within ephemeral waters,
mixing zones within ephemeral waters, or whether the limits are instantaneous at the point of
compliance.

1 evidence, and without any evidence of potential impairment, the Regional Board chose to
2 ignore the scientific evidence, disregard the SWRCB policy set forth in the SIP, and adopted
3 numeric discharge limits based solely on emotional pleas from the public rather than
4 scientific evidence.

5 In addition, the WDRs continue to include numeric effluent limits for several
6 chemicals that had numeric effluent limits in the previous permit but have five years of
7 monitoring showing no detections of those chemicals. As described in Exhibit B, those
8 limits are not appropriate and should be withdrawn. Removal of these limits is not
9 prohibited by anti-backsliding because the evidence shows that one or more of the
10 exceptions to anti-backsliding apply in this case.

11 Petitioner also challenges the Regional Board's use of MUN-Based Effluent
12 Limits in the WDRs. Despite the fact that the SSFL receiving waters have only a "potential
13 MUN" designation, the Regional Board, without legal or technical support, imposed numeric
14 limits based on surface water MUN designations. The WDRs also erroneously reference use
15 of California Code of Regulations Title 22 drinking water standards Maximum Contaminant
16 Levels ("MCLs") as numeric limits included in the WDRs. There is no basis for imposing
17 MCL-based discharge limits in the WDRs because none of the receiving waters have an
18 "existing MUN" designation and no evidence has been presented that the SSFL overlies or
19 has a hydrologic connection to a groundwater basin designated MUN.

20 Effluent limitations are required if there exists a potential to exceed applicable
21 criteria or the receiving water is impaired for the chemical of concern. The very purpose of
22 having a procedure spelled out within the SIP was to prevent the imposition of effluent limits
23 such as those imposed within the subject permit. The record and the law do not support the
24 imposition of effluent limits based solely upon public concern. Therefore, the numeric limits
25 for the chemicals and the associated outfalls listed in Exhibit B should be deleted.

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1 D. SWRCB Action Is Needed To Determine The Role Of Regional
2 Board Monitoring Requirements Within The Jurisdictional Borders
3 Of An Active RCRA Correction Site.

4 The upstream channels of the facility are currently under the direction of
5 DTSC as the lead agency for RCRA corrective action. The imposition of enforceable
6 monitoring requirements within these channels may place Petitioner in the untenable position
7 of compliance with one regulatory entity which would ensure non-compliance with another
8 regulatory program. There is simply no compelling environmental, health, or safety
9 rationale for the Regional Board to second guess the DTSC programmatic effort. If the
10 Regional Board is dissatisfied with how DTSC is handling oversight of water quality
11 measures at the site, it has other, more reasonable means of coordinating its regulatory
12 activities by directly addressing these issues with DTSC.

13 Compelling water quality monitoring within RCRA clean-up operations that
14 bears no relationship to concentrations being discharged at water quality compliance points
15 suggests one of two conclusions: (1) that the Regional Board seeks to control outcomes of
16 the RCRA cleanup activities; or, (2) that the Regional Board, recognizing the disparate and
17 conflicting programmatic schedules and requirements seeks to place Petitioner in non-
18 compliance regardless of good faith efforts to comply. Either conclusion calls for SWRCB
19 relief.

20 5. Manner In Which Petitioner Has Been Aggrieved.

21 Petitioner has been aggrieved by the Regional Board's decision to require
22 monitoring of discharges in the upstream channels for the purpose of establishing numeric
23 discharge limits. The rationale behind requiring this testing has not been adequately set forth
24 and may lead to adoption of discharge limits located wholly within the on-site RCRA clean-
25 up operations. Compliance with such limits will not only result in increased costs to the
26 Petitioner, but may also substantially interfere with the timetable for the corrective action at
27 the site.

1 The Regional Board also has imposed unreasonable reporting requirements and
2 re-opener clauses by requiring that any detection of a monitored analyte that does not have a
3 numeric limit be reported to the Regional Board within 24 hours of the discharger's
4 knowledge so that a Reasonable Potential Analysis ("RPA") may be conducted. Upon
5 determination by Regional Board staff that reasonable potential exists, the Regional Board
6 staff must reopen the permit and bring it before the Regional Board within 90 days to add a
7 numeric limit for that analyte.

8 Petitioner is also aggrieved by the addition of numeric discharge limits in
9 storm water-only discharges and the retention and/or addition of numeric limits where no
10 reasonable potential has been demonstrated. The Regional Board has shown no discernable
11 corresponding benefit to water quality, or human health or safety from the imposition of the
12 requirements that this Petition appeals.

13 **6. State Board Action Requested.**

14 Petitioner respectfully requests that the State Board determine that the
15 Regional Board's actions in renewing the WDRs were inappropriate and improper, and that
16 it assume the powers of the Regional Board to amend the WDRs as follows: (1) delete
17 monitoring and numeric limits for all constituents shown to have no reasonable potential; (2)
18 eliminate monitoring and limitations upstream of any SWMU; (3) revoke the numeric limits
19 for storm water discharges and allow Petitioner to operate under the Industrial General Storm
20 Water Permit.

21 **7. Statement Of Points And Authorities.**

22 A Separate Statement of Points and Authorities will be filed if Petitioner elects
23 to pursue this Appeal. For the purposes of this placeholder petition, the Statement of Points
24 and Authorities is subsumed in paragraph 4 of this petition, entitled *Reasons Why Regional*
25 *Board's Action Was Inappropriate or Improper and Statement Concerning Substantive*
26 *Issues and Objections.*

27 **8. Copy Of Petition Sent To Regional Board.**

28 A copy of this Petition has been sent to the Regional Board.

1 9. Preservation Of Right To Request Hearing.

2 As provided in 23 C.C.R. Section 2050.6(b), Petitioner reserves the right to
3 request a hearing for the purpose of presenting additional evidence not previously presented
4 to the Regional Board. Petitioner requests the right to supplement the Administrative Record
5 by providing evidence.

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7 For the foregoing reasons, Petitioner requests that the SWRCB amend the
8 WDRs as described in this Petition.

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11 DATED: August 2, 2004

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